February 19, 1993 Date:

To: **Nursing Homes** NH 4 Facilities for the Developmentally Disabled FDD

From: Larry Tainter, Director

Bureau of Quality Compliance

Waiver of Certain HSS 132 and HSS 134 Code Provisions Subject:

This is to announce a statewide waiver of certain provisions in HSS 132 (Nursing Homes) and HSS 134 (Facilities for the Developmentally Disabled) relating to the impact of communicable disease on both admission policies and employment practices. The waiver is necessary to bring HSS 132 and HSS 134 into compliance with the Americans with Disabilities Act, as well as the Rehabilitation Act of 1973.

Federal law recognizes a contagious disease as a disability and prohibits illegal discrimination in employment as well as in access to services based on disability. Therefore, federal law prohibits facility-imposed limitations in employment or access to services where the limitations are not case specific legal rationale. This includes limits for specific conditions or diseases without regard to medical protocol and diagnosis or prognosis.

All employers, including nursing homes and facilities for the developmentally disabled, must review the case specific circumstances of the contagious disease of the employee or prospective employee to determine if an accommodation could be made to allow the individual to work without jeopardizing the residents' health. Employers must also make case specific decisions about resident admissions and readmissions to determine if an accommodation could be made to admit the individual without jeopardizing other residents' health.

Each facility should check with its own attorney to determine the scope of the facility's obligations under the Acts.

The following Wisconsin Administrative Code provisions prohibit employment or access to services based on the general category of a contagious disease. To the extent that these provisions conflict with the federal Acts, they are hereby waived.

- HSS 132.42(3)(a), HSS 132.42(4), HSS 134.44(5) and HSS 134.44(6): Restricts the hiring or continued employment of individuals (including volunteer workers) with communicable diseases. This specific section of the identified codes is in violation of both federal acts. The language pertaining to the employee having been screened for tuberculosis (TB) in HSS 132.42(3)(a) and HSS 134.44(5) remains valid, however, the nonhiring or termination of an employee who tests positive for TB is prohibited by federal laws.
- 2. HSS 132.51(2)(b)1., HSS 132.52(2)(c), HSS 134.51(1)(c) and HSS 134.52(d)(d): Restrict the admission and provision of services to individuals with communicable diseases. Any denial of admission or readmission to a nursing home, based on a general restriction of individuals with a contagious disease violates federal law. It should be noted that facilities may NOT require negative cultures as criteria for admission or readmission of residents from acute care and other health care facilities. A facility may require negative cultures to admit individuals with those diseases that require negative pressure rooms, vented directly to the outside (i.e., active tuberculosis), when the facility currently has no such room available.

The waiver of these provisions does not relieve a facility from its responsibility to protect resident health, safety and welfare through the use of effective infection control measures. Wisconsin Administrative Code HSS 132.51(2)(b)2 and HSS 134.51(1)(c)2 require facilities to follow the Centers for Disease Control and Prevention (CDC) Guideline for Isolation Precautions in Hospitals and the CDC Guideline for Infection Control in Hospital Personnel when managing residents and staff with known or assumed contagious diseases. Nursing homes are also required to follow the CDC's Universal Precautions for the Prevnetion of Bloodborne Pathogens in Health Settings. Residents with multiresistant organisms including Methicillin Resistant Staphylococcus Aureus (MRSA) must be managed in accordance with BQC memo 91-039 dated September 9, 1991.

The waivers announced in this memo will remain in effect until HSS 132 and HSS 134 are revised.

Please contact your Field Operations Manager, if you have questions.